

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

WESTERN STATES CHIROPRACTIC  
COLLEGE

Employer

and

Case 36-UC-271

WESTERN STATES CHIROPRACTIC  
COLLEGE FACULTY ASSOCIATION, LOCAL  
3809, affiliated with AMERICAN FEDERATION  
OF TEACHERS, AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act.

The Employer is a college engaged in the teaching and training of chiropractic physicians in Portland, Oregon. The petition seeks the inclusion of the director of learning resources in the bargaining unit.

The current collective bargaining agreement between the parties was signed on February 18, 1999, and has a term of July 1, 1998 to June 30, 2000. The contractual unit is as follows:

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<sup>1</sup> The parties filed briefs, which have been considered.

All faculty employees employed by the Employer who hold a full-time annually contracted faculty appointment, or who hold a part-time annually contracted classroom faculty appointment which is at least 50% of an annual full-time credit hour equivalent (at least 21 CHE on a fiscal year basis), all annually contracted staff clinicians, attending physicians, primary care providers and researchers employed at least 50% (at least 22.5 CHE on as fiscal year basis) time, adjunct faculty as defined in Article 14, Section 2, science department laboratory supervisor, academic department chairs, librarians, Instructional Media Center (IMC) director and technicians (who are employed on at least a 50% annual contract), but excluding office clerical employees, guards, supervisors as defined in the Act, and all other employees at the time the decision was made and not subsequently included by agreement of the parties.

The unit was certified on January 31, 1978, in Case 36-RC-3975. Subsequent to certification, the parties negotiated the inclusion in the unit of certain positions, including that of head librarian. In the winter of 1997, the head librarian, Kay Irvine passed away. Pamela Bjork was appointed interim head librarian, and then on July 1, 1997, Bjork was appointed director of learning resources, the new job title for the position of head librarian. Upon Bjork's appointment, the Employer took the position that the director of learning resources was excluded from the bargaining unit. In their recent negotiations, the parties were unable to reach agreement regarding the position. There is no contention that the instant petition is untimely.

As director of learning resources, Bjork is in charge of the library and the Instructional Media Center (IMC). Two bargaining unit employees along with an unspecified number of non-bargaining unit employees report to her. Bjork testified that there has been no significant change in her job responsibilities or duties since she was interim head librarian, and that the job of director of learning resources is the same as the job of head librarian.

It is uncontroverted in the record that Bjork evaluates employees, schedules employees, approves requests for vacations and time off, and signs employees' time sheets on a monthly basis. A media clerk, Anna Papageorge, was hired in August 1998. Bjork rewrote the job description for the position, wrote the advertisement that was placed in the newspaper, and invited members of the library staff to be on an interview committee. The committee as a group chose candidates for interviews, interviewed them, and then gave their opinions to Bjork, who made the final choice. She made her recommendation to her superior, Ronald Sellner, vice president for academic affairs, who approved her recommendation without having met the job candidate.

Bjork has given verbal reprimands to employees, although there is no evidence that any record is kept of such reprimands. On August 5, 1998, she issued a written reprimand to employee Patty Turrentine. Before issuing the document she received approval from Sellner, who did not conduct any independent investigation of the matter.

As director of learning resources, Bjork is the person to whom a bargaining unit library employee would initially present a grievance in accordance with step one of the contractual grievance procedure. There is no evidence or contention that Bjork lacks authority to resolve a grievance at the step one level.

During her tenure as director of learning resources, Bjork independently made a decision to physically rearrange the library, which involved moving and rearranging the bound and unbound journal collections, all of the IMC collection, the computers, and the study space.

Section 2(11) of the Act defines a “supervisor” as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The record establishes that Bjork has and exercises authority to responsibly direct employees in that she schedules their hours of work, and can grant time off, including approval of vacations. Bjork also has authority to adjust employees’ grievances, and to effectively recommend hiring and discipline. I conclude, therefore, that Bjork is a supervisor within the meaning of the Act. Petitioner contends that Bjork is included in the unit inasmuch as the only difference between her position and that of head librarian is the job title, and the parties agreed in 1990 to include the head librarian in the unit. However, the Board does not include statutory supervisors in bargaining units, even if, in the past, the parties have agreed to such inclusion. Therefore, as I have found herein that Bjork is a statutory supervisor, I conclude that she is excluded from the unit. Therefore, I shall deny the petition.

### **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, denied, and, further, it is dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14<sup>th</sup> Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 3, 1999.

**DATED** at Seattle, Washington, this 20th day of May, 1999.

/s/ CATHERINE M. ROTH

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